REMARKS

The Examiner is respectfully requested to withdraw the finality of the last Office action (Paper No. 8) on the grounds that it was premature (see MPEP 706.07(a), 706.07(c) and 706.07(d)). MPEP 707.07(a) defines a premature final as one "where the examiner introduces a new ground of rejection not necessitated by amendment of the application by applicant". There were no amendments to the claims in the last response filed on 12 March 2004. Accordingly, the new rejections under 35 U.S.C. §102 and §103, were not necessitated by amendment and therefore, the finality of the last Office Action is deemed premature. Since the finality of Paper No. 8 is deemed premature, entry of the foregoing Amendment is respectfully requested.

Claim 10 was rejected under 35 U.S.C. §102(e) as being anticipated by Allport. Claim 11 was rejected under 35 U.S.C. §103(a), as rendered obvious and unpatentable, over Allport in view of Srey et al. These rejections are deemed moot in view of the cancellation of claims 10 and 11.

Claims 1, 3-5, 9 and 12 were rejected under 35 U.S.C. §103(a), as rendered obvious and unpatentable, over Allport in view of Hoshino. The Applicant respectfully traverses this rejection for the following reason(s).

Contrary to the Examiner's indication, element 10 in Allport is not a *computer main body*. Instead, Allport discloses a controller 10 which is defined therein as a hand-held remote control with a visual display area 20.

Additionally, claim 1 calls for, in part *a monitor having a screen and a front cover*

surrounding said screen; and *a fingerprint recognizing module included with said monitor*. Here, the Examiner states that "Allport discloses . . . a monitor." There is no reference number given to indicate which element of Allport the Examiner wishes to identify as the monitor. Also, the Examiner refers us to Allport's screen 20, disclosed by Allport as being a visual display area 20 of a hand-held remote control, or in other words, a visual display area 20 of controller 10.

The Examiner has deemed controller 10 to be the claimed *computer main body*. Therefore, on view of the Examiner's indication of what Allport discloses, this would mean that Allport discloses a *computer main body* having a visual display area (screen) 20, instead of the *monitor* having a visual display area (screen) 20 as required by Applicant's claim.

It is important to be able to differentiate the monitor from the computer main body in Allport, because Applicant's claim 1 requires that the monitor include *a fingerprint recognizing module*.

In Paper No. 8, the Examiner states that Allport's supposed monitor includes such a fingerprint recognizing module, and then indicates that such a fingerprint recognizing module is not shown in Allport. We note also that the Examiner has failed to identify where Allport's specification discusses such a fingerprint recognizing module. Accordingly, the Examiner has failed to provide a *prima facie*[1] basis of support for the statement that Allport's (supposed) monitor includes a fingerprint recognizing module. It appears that the Examiner has merely speculated that Allport's

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[1]   *In re Rijckaert*, 28 USPQ2d 1955 (CAFC 1993) states:

> "A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." *In re Bell*, 991 F.2d 781, 782, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting *In re Rhinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976). If the examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

invention includes a fingerprint recognizing module and then, based on such speculation[2], erroneously holds that the fingerprint recognizing module is included in the monitor instead of the controller (i.e., the Examiner's indicated computer main body) 10.

Therefore, since the Examiner fails to provide a *prima facie* basis for the rejection and relies on speculation to support the rejection, the rejection is deemed to be in error and should be withdrawn.

Further, claim 1, and similarly claim 12, have been amended to include the Applicant's disclosed feature that the computer main body comprises a kernel of an operating system of the computer main body, wherein the kernel determines whether a fingerprint data base has been established in the computer main body; recognizes that the fingerprint recognizing display system has been activated; performs a fingerprint registration routine when it is determined that the fingerprint data base has not been established; and determines whether the monitor is a fingerprint recognizing monitor when it is determined that the fingerprint data base has been established.

There is no *operating system* disclosed for Allport's controller 10. Therefore, there is no kernel disclosed or taught by Allport.

Hoshino discloses a computer 1 which obviously requires an operating system, and it is well known in the art that operating systems utilize a kernel.

A kernel is well known in the computer art to be the essential center of a computer operating system, the core that provides basic services for all other parts of the operating system. Typically,

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[2] Deficiencies in the factual basis cannot be supplied by resorting to speculation or unsupported generalities. *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967) and *In re Freed*, 425 F.2d 785, 165 USPQ 570 (CCPA 1970).

a kernel (or any comparable center of an operating system) includes an interrupt handler that handles all requests or completed I/O operations that compete for the kernel's services, a scheduler that determines which programs share the kernel's processing time in what order, and a supervisor that actually gives use of the computer to each process when it is scheduled. A kernel may also include a manager of the operating system's address spaces in memory or storage, sharing these among all components and other users of the kernel's services. A kernel's services are requested by other parts of the operating system or by application programs through a specified set of program interfaces sometimes known as system calls.

Hoshino discloses an input device 3 connected to the computer 1 via an interface 2, wherein input device 3 includes a keyboard 8, a fingerprint sensor 9, a display device 10 and a fingerprint collating device 12.

Fingerprint collating device 12 is apparently used to authenticate a person's fingerprint, but Hoshino fails to specifically disclose this function. Instead, Hoshino discloses that The computer 1 includes middle-ware 6, which comprises the capability of personal authentication by fingerprint, if the fingerprint collating device 12 has no capability of personal authentication.

Therfore, Hoshino fails to disclose that the kernel for the operating system of computer 1 has the functions of the kernel disclosed and claimed by the Applicant. Therefore, since neither of the applied references teaches that the computer main body comprises a kernel of an operating system of the computer main body, wherein the kernel determines whether a fingerprint data base has been established in the computer main body; recognizes that the fingerprint recognizing display system has been activated; performs a fingerprint registration routine when it is determined that the fingerprint data base has not been established; and determines whether the monitor is a fingerprint

recognizing monitor when it is determined that the fingerprint data base has been established, then the rejection fails to meet the requirements of 35 U.S.C. §103.

Accordingly, the rejection of claims 1, 3-5, 9 and 12 is deemed to be in error and should be withdrawn.

Claim 2 was rejected under 35 U.S.C. §103(a), as rendered obvious and unpatentable, over Allport in view of Srey et al. Claims 6-8 were rejected under 35 U.S.C. §103(a), as rendered obvious and unpatentable, over Allport in view of Hoshino and in further view of Setlak et al. Claims 13, 15, 16 and 18 were rejected under 35 U.S.C. §103(a), as rendered obvious and unpatentable, over Allport in view of Hoshino and in further view of O'Connor et al. And claim 17 was rejected under 35 U.S.C. §103(a), as rendered obvious and unpatentable, over Allport in view of Hoshino and in further view of Fitzpatrick et al. The Applicant respectfully traverses these rejection for the above stated reason(s).

Note that none of Srey et al., Setlak et al., O'Connor et al. and Fitzpatrick et al. teach the feature of the kernel noted as lacking in the proposed combination of Allport and Hoshino. Accordingly, the rejections of claims 2, 6-8, 13 and 15-18 are deemed to be in error and should be withdrawn.
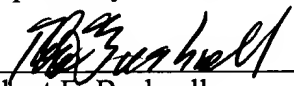
New claims 20-23 include the features recognized above as lacking in the teachings of the prior art. Particularly, the features of a method of recognizing a fingerprint to enable a user to operate a computer system including a monitor and a computer main body, said method being embodied in

a kernel of an operating system of said computer main body and comprising the steps of: determining whether a fingerprint data base has been established in said computer main body prior; performing a fingerprint registration routine when it is determined that said fingerprint data base has not been established; and determining whether said monitor is a fingerprint recognizing monitor when it is determined that said fingerprint data base has been established, as a whole are not taught by the art of record. Accordingly, new claims 20-23 are deemed to be allowable.

The examiner is respectfully requested to reconsider the application, withdraw the objections and/or rejections and pass the application to issue in view of the above amendments and/or remarks.

Should a Petition for extension of time be required with the filing of this Amendment, the Commissioner is kindly requested to treat this paragraph as such a request and is authorized to charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of the incurred fee if, **and only if**, a petition for extension of time be required **and** a check of the requisite amount is not enclosed.

Respectfully submitted,

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